

Pages 1 - 45

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable James Donato, Judge

In Re: Google Play Store)
Antitrust Litigation,)
)
) NO. 3:21-md-02981-JD
)
)

San Francisco, California
Thursday, October 12, 2023

TRANSCRIPT OF PROCEEDINGS

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UNITED STATES COURT REPORTERS

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1 Tuesday - October 12, 2023

11:27 a.m.

2 P R O C E E D I N G S

3 ---000---

4 **THE CLERK:** Calling Civil 20-5671 Epic Games, Inc.
5 versus Google LLC; Civil 20-5761, In Re Google Play Consumer
6 Antitrust Litigation; Civil 21-5227, State of Utah versus
7 Google, LLC; 21 multi district 2981, In Re Google Play Store
8 Antitrust Litigation, and 22-2746, Match Group LLC versus
9 Google LLC.

10 Counsel.

11 **MS. BLIZZARD:** Good morning, Your Honor. Paula
12 Blizzard for the state of California and 52 of my fellow
13 attorneys general.14 **MR. DIXON:** Good morning, Your Honor. Doug Dixon,
15 Hueston Hennigan for Match Group.16 **MR. BORNSTEIN:** Good morning. Gary Bornstein for Epic
17 Games.18 **MR. GLACKIN:** Good morning, Your Honor. Brendan
19 Glackin for the states.20 **MS. GIULIANELLI:** Good morning, Your Honor. Karma
21 Giulianelli for the individual plaintiffs.22 **MR. POMERANTZ:** Good morning, Your Honor. Glenn
23 Pomerantz on behalf of Google. At counsel table with me from
24 our firm are Kuruvilla Olasa, Dane Shikman, and Jonathan
25 Kravis.

MR. ROCCA: Good morning, Your Honor. Brian Rocca and Michelle Park Chiu for Google.

THE COURT: Let's hear about the big news.

MR. SRINIVASAN: One second, Your Honor. I'm sorry, this is Jay Srinivasan. I'm here for Apple, a third party?

THE COURT: Oh, yes, we'll do that in just a moment.
Please sit right over there.

MR. SRINIVASAN: Thank you.

THE COURT: Okay. What's happening on the settlement front?

MS. BLIZZARD: Good morning, Your Honor. I am here with good news.

THE COURT: Okay.

MS. BLIZZARD: So you - -

THE COURT: It's hard to visualize until I see it, but I'm happy to hear it.

(Laughter)

MS. BLIZZARD: You expressed some concern at the last status conference that in these divisive times you weren't sure if 52 attorneys general could agree on it, so I am delighted to tell you that we have done you one better. We have 53 attorneys general.

THE COURT: Who is the new person?

MS. BLIZZARD: We've added the Virgin Islands, Your Honor.

We have all 50 states. We have the District of Columbia. We have Puerto Rico, and we've added the Virgin Islands. So we have 53 attorneys general representing all of their citizens who have reviewed the agreement, and I am here to give you as you requested --

THE COURT: What happened to Guam? What about Guam?

MS. BLIZZARD: Guam did not decide to join, Your Honor. We made an attempt with all the territories.

THE COURT: Are they opting out?

MS. BLIZZARD: I don't know. I do not -- I'm not here to represent Guam, we'll have to see.

THE COURT: Saipan?

(Laughter)

MS. BLIZZARD: I don't know.

THE COURT: I'm thinking of all the Article 4 courts.

Okay. So that's great, so it's signed, it's done and it's --

MS. BLIZZARD: Yes. So I am here with a rock-solid representation, just what you requested.

THE COURT: When will I see the settlement?

MS. BLIZZARD: So, Your Honor, as you know, we -- this includes *parens patriae* claims; therefore, we have to give notice, and at that time we will attach the settlement agreement. We are preparing that.

Obviously, Your Honor asked us to also keep preparing

1 for trial, so for the past month we've had a whole team still
2 doing trial things. We are, unfortunately, not ready to give
3 you that motion for notice.

4 **THE COURT:** When will that be filed?

5 **MS. BLIZZARD:** Your Honor, we'd like to have -- get it
6 done by Thanksgiving. We'd like six weeks. We have just gone
7 through a process to get all of these attorneys general --

8 **THE COURT:** Why will it take six weeks?

9 **MS. BLIZZARD:** Your Honor, I think because we all
10 think it's very important because there is money here going
11 back to consumers. You have expressed concerns, my own
12 attorney general has expressed concerns that the claim rate or
13 the number of people that get their money has to be high, and
14 we want to get it right. We have been working on it, but as I
15 said, until you vacate the trial date, which I'm hoping you do
16 today --

17 **THE COURT:** I'll need to approve the *parens patriae*
18 settlement, right?

19 **MS. BLIZZARD:** Excuse me? You need to approve, yes.
20 So under -- the states are bringing both federal
21 claims as well as state claims. Under the federal claims you
22 have to approve a *parens patriae* settlement --

23 **THE COURT:** It's just I'm uncomfortable having a trial
24 and at the end of it finding out it's a settlement that I'm not
25 going to approve. I'm not -- I don't know, that's my lack of

1 comfort: Is the end a certainty?

2 So can you at least -- there must be -- you signed a
3 binding term sheet, you must have signed something.

4 **MS. BLIZZARD:** We had pre approval of the term sheet a
5 month ago. We have now finalized the agreement. All the Is
6 are dotted, the Ts are crossed, and it has gone all the way to
7 the attorney general level.

8 And, Your Honor, to give you some comfort, right --

9 **THE COURT:** Why can't I just see it now? You can just
10 lodge it. You don't have to file it. It won't be posted
11 anywhere.

12 **MS. BLIZZARD:** You'd like it lodged under seal?

13 **THE COURT:** Do you care, Mr. Pomerantz?

14 **MR. POMERANTZ:** As long as it's under seal, Your
15 Honor.

16 **THE COURT:** No, you're lodging it, which means you
17 just literally knocked on my chambers door and handed me a
18 copy. It's not going to be -- you don't have to worry about
19 sealing. I'm the only person who is going to see it. Just
20 hand it to -- if you will figuratively knock on the door, you
21 will literally hand it to someone on the 16th who will then
22 hand carry it to me, and it will not be filed.

23 **MS. BLIZZARD:** Yes, Your Honor. We're happy to do
24 that.

25 **THE COURT:** And I understand what you're asking, and I

1 have no reason to gainsay it, but I have not approved a number
2 of settlements because I have developed a keen sense of
3 responsibility for the absentee, in this case state citizens,
4 and I will sleep a lot better if I at least see it and overtly
5 it doesn't cause me any heartburn, okay?

6 **MS. BLIZZARD:** That's fine, Your Honor.

7 **THE COURT:** So why don't you lodge it, all right?
8 I'll tell you what, I'm going to make a special exception. Who
9 is going to do that, Mr. Pomerantz or you? You?

10 **MS. BLIZZARD:** I'll do it.

11 **THE COURT:** Okay. Are you across the street?

12 **MS. BLIZZARD:** I am.

13 **THE COURT:** Okay. If you want to do this, we'll do a
14 special deal, one time only just for you. You or someone from
15 your office can come up to my chambers door tomorrow, okay, and
16 just drop it off, all right?

17 **MS. BLIZZARD:** Okay.

18 **THE COURT:** You don't have to go to the clerk's
19 office.

20 **MS. BLIZZARD:** Will do.

21 **THE COURT:** One copy, and make sure it's signed by
22 everybody. I'm going to see a Google signature on it, and
23 everybody else. Do you have that?

24 **MS. BLIZZARD:** Yes. Your Honor, the way it works is
25 that we get written authorization from each attorneys general,

1 their office. They then dictate who has authority to sign and
2 grant us authority to affix a signature, but we have all the
3 approvals.

4 **THE COURT:** I'll tell you what, I will accept your
5 representation and hold you liable for this, but I will accept
6 your representation that everyone is agreed. I just want to
7 see the terms, okay?

8 **MS. BLIZZARD:** Yes.

9 **THE COURT:** And Google's signature.

10 **MR. POMERANTZ:** Your Honor, our signature is also in
11 the process of being gathered. You have my word that all of
12 the relevant people in Google have approved the terms of the
13 settlement that you will see in the document.

14 **THE COURT:** It's a hundred percent certain they're
15 going to sign, do you know?

16 **MR. POMERANTZ:** Yes, sir. Yes, Your Honor.

17 **THE COURT:** Just make sure you agree on the proper
18 document, okay? I don't want to have any slippage on that.
19 You and Mr. Pomerantz agree, and you can just walk that over
20 tomorrow, okay?

21 **MS. BLIZZARD:** Yes.

22 **THE COURT:** Is that going to work?

23 **MS. BLIZZARD:** It works.

24 **THE COURT:** Do you want to do it on Monday?

25 **MS. BLIZZARD:** No, no, tomorrow is fine. My question

1 is when will the trial date get vacated so I can move those
2 resources that are doing exhibit lists and things to --

3 **THE COURT:** I will do it first thing in the morning
4 whenever you walk it over, and I'll let you know right after
5 that.

6 **MS. BLIZZARD:** All right. Do you need a proposed
7 order or anything?

8 **THE COURT:** No, you're handing over the term slip.
9 I'm going to go in my office, close the door, look at it, and I
10 would post a text order.

11 **MS. BLIZZARD:** Post a text order. Okay. Thank you.

12 **THE COURT:** The text order will say one of two things:
13 See you on November 6th or your remaining dates are vacated.

14 Now, what about the consumers?

15 **MS. GIULIANELLI:** Good morning, Your Honor.

16 The individual plaintiffs have also approved and
17 signed the settlement.

18 **THE COURT:** Same thing?

19 **MS. GIULIANELLI:** Exact same agreement, so we all
20 entered into the agreement jointly.

21 **THE COURT:** One agreement for everybody?

22 **MS. GIULIANELLI:** One agreement for everybody.

23 **THE COURT:** So you will be a part of this?

24 **MS. GIULIANELLI:** Correct, we are part of this and
25 have all signed off on it.

1 **MR. POMERANTZ:** Your Honor, if I may briefly address
2 the timing of the agreement to the motion for approval of the
3 notice to the consumers.

4 **THE COURT:** So the idea is what, November 26th or
5 something like that?

6 **MS. BLIZZARD:** Yes.

7 **MR. POMERANTZ:** Your Honor, we are concerned about all
8 of this being public in the middle of a jury trial, if there is
9 a jury trial, which is the issue we'll discuss later. But
10 assuming there was a jury trial, we would prefer that either
11 this motion gets filed before the trial that would begin so
12 that Your Honor can inquire during voir dire to make sure there
13 has been nobody who has read it or that it's filed after the
14 jury has reached a verdict so that we don't have the risk of a
15 juror reading about it, researching it, or anything like that,
16 but we would just ask for one or the other.

17 **THE COURT:** Well, we should be done by the 26th.

18 **MR. POMERANTZ:** That's not the time estimate right
19 now. It's something that we can discuss with Epic and Match's
20 counsel. But the time estimate right now would push the trial
21 into December, and so we would just ask that it either be --
22 and I understand that the states would want it -- I don't think
23 they care if it's a little bit later, from our discussions. So
24 we would just ask that we be allowed to file that motion after
25 the trial, after the jury reaches its verdict.

1 **MS. BLIZZARD:** We agree, Your Honor. We respectfully
2 request that we need until just before Thanksgiving,
3 November 26th, and if that somehow causes concern with the
4 trial and you would like to delay it, we are fine with that
5 also.

6 **THE COURT:** Well, I do think it's a little risky to
7 have partial settlements floating around during a trial. So
8 I'm amenable to that, that's fine.

9 We have to be done by the end of -- I don't know what
10 you all have in mind. I gave you time limits, and those time
11 limits were based on starting the 6th, we're going to go through
12 Tuesday at 5 o'clock, and last day of the week we'll be done,
13 and now we have half the case. So we're not, you know, this is
14 going to be done.

15 Anyway... okay. So what time roughly tomorrow? I'm
16 not tying your hands to what time roughly tomorrow, just so we
17 can be ready? Let's just set a time. Can you do it at
18 10:00 o'clock?

19 **MS. BLIZZARD:** Yes, let's say 10:00 o'clock.

20 **THE COURT:** All right. We will be waiting.

21 Okay. All right. Let's talk about these two things
22 first, trial witnesses, and then we'll talk about other issues.

23 Let's see, Karson Oliver. Apple. Yes.

24 **MR. SRINIVASAN:** Good morning, Your Honor.

25 Your Honor, so there's really one issue here or one

1 issue that Google has said why Mr. Oliver should be appearing at
2 trial, and of course our position is he shouldn't. They say
3 they need him because they want to show competition between
4 Google and Apple. They say two things, there's two problems
5 with it. On one hand they say this is just public material
6 that's already out there about Apple and Google competing, in
7 which case, as we briefed Your Honor, it is entirely unnecessary
8 and duplicative, Mr. Oliver's testimony that is. In other
9 words, that public information, they have not only public
10 information --

11 **THE COURT:** That's not going to go anywhere. Right
12 down the street, okay, do you know -- didn't Tim Scott testify
13 in the other case?

14 **MR. SRINIVASAN:** It wasn't Mr. -- it was Mr. -- two
15 other executives say it wasn't Mr. Cook in the --

16 **THE COURT:** Did Mr. Cook testify?

17 **MR. SRINIVASAN:** He didn't, Your Honor. In that case
18 there was -- at issue in that case was a Google/Apple agreement
19 in which Apple was a party and therefore testimony was
20 required.

21 Let me cut to the other reason why. The reason why is
22 Mr. Oliver is not going to be asked just about public
23 information. He is going to be asked about Apple confidential
24 sensitive material, and I can tell you exactly why that is. We
25 know that because -- and by the way, just before I get there,

1 that's, of course, subject to Rule 45(d), (b) and (c) which
2 says if you are implicating confidential material of a party,
3 you must show a substantial need for that testimony.

4 And why we know it's not just public information, Your
5 Honor, is I think it's in the papers, Google has asked Apple to
6 certify 18 documents that we produced. We produced over
7 200,000 documents as a third party in this case. They said
8 please certify 18 documents. We said we'll do that --

9 **THE COURT:** Well, let me just -- I don't understand
10 what the problem is. He's down the street. He has about an
11 hour of testimony. What is the problem?

12 **MR. SRINIVASAN:** The problem is --

13 **THE COURT:** You know there are tons of loose ends and
14 getting ready for trial is maybe one of them. That's not a big
15 deal, just get it done. So what is the issue? I don't see
16 any --

17 Look, I know you don't want to be here, but, you know,
18 you're here, so what do you want me to do? I mean, I don't see
19 any reason to say that they can't do this.

20 **MR. SRINIVASAN:** Well, we don't think it's going to be
21 45 minutes, Your Honor. That's just Google's estimate.

22 **THE COURT:** That's just me estimating. It's a
23 non-binding estimate.

24 **MR. SRINIVASAN:** I understand.

25 **THE COURT:** Even if it's two hours, okay, what's the

1 problem?

2 **MR. SRINIVASAN:** Well, you know, we put it in our
3 papers, Your Honor. In other words, it's not just a day of
4 testimony, it's a day of trial testimony that --

5 **THE COURT:** It's not a day. I can guarantee you it's
6 not going to be a day of testimony. They don't have any time
7 for that. Mr. Oliver at Apple is not going to be even close to
8 a day of testimony because that would be about a third or a
9 quarter of their allotted time. So it's going to be an hour
10 maybe, maybe a little bit more, maybe less, who knows. I'll
11 give you half a day, I'll give you that, only half a day depo.
12 Who wants to do the depo? Does Google want to do the depo?
13 Who wants to do the depo?

14 **MR. KRAVIS:** I believe it's my friends at Epic.

15 **THE COURT:** Epic wants to do the depo. I'll give you
16 4 hours, just getting a preview of what Mr. Oliver is going to
17 say. What more do you want?

18 **MR. SRINIVASAN:** If Your Honor, as I said --

19 **THE COURT:** I'm not going to say no. He's here, and
20 he's going to testify.

21 **MR. SRINIVASAN:** Understood, Your Honor, and I
22 appreciate Your Honor's limiting the deposition to just 4
23 hours.

24 **THE COURT:** Well, let me just ask, is that realistic?
25 Are you okay with that?

1 **MR. BORNSTEIN:** Your Honor, we do have the separate
2 motion under Rule 37 to preclude Mr. Oliver's testimony in its
3 entirety in light of the disclosure failures on Google's side.
4 It's a separate issue from the one --

5 **THE COURT:** No, I know. Mr. Bornstein, I mean, you're
6 going to have an issue one day where you're going to come in
7 and say you want to do something and maybe all the Is weren't
8 dotted and all the Ts weren't crossed. It's trial. I said
9 this many times, it's going to be a little bit of both, you
10 know, somebody walking in at the wrong time, somebody not
11 walking in at the right time. You just gotta get it done,
12 okay? I'm not going to throw out a key witness.

13 There's no doubt in my mind that Apple is going to be
14 an illuminating witness, very likely, maybe not, but very
15 likely. And to say that Google was a little bit late in telling
16 you about it, which I'm not even sure is true, it's not like
17 Mr. Oliver dropped out of the sky unknown to anyone and is now
18 making, you know, a literally meteoric appearance that's going
19 to destabilize the universe. You know about him, he's been
20 around, Apple is in the air, so it's going to happen.

21 So the question is, is 4 hours going to be enough? Is
22 it just you asking him questions?

23 **MR. BORNSTEIN:** It will be someone on my team as well
24 as the folks on the Match team.

25 **THE COURT:** All right.

1 **MR. BORNSTEIN:** So we're happy to split the time.

2 **THE COURT:** Couple hours each?

3 **MR. BORNSTEIN:** For a full-day deposition.

4 **THE COURT:** Full day? What are you going to ask this
5 guy?

6 **MR. BORNSTEIN:** Well, Your Honor, we're having a
7 witness come, what are we seven, we're four weeks now before
8 trial.

9 **THE COURT:** Yes.

10 **MR. BORNSTEIN:** Who is --

11 **THE COURT:** Listen, I've had depositions taken during
12 trials, so don't play the timecard.

13 **MR. BORNSTEIN:** Your Honor, nobody from Apple has been
14 deposed in this case. My friends at Google say: Well, you
15 deposed him last time. Obviously, we have a protective order.
16 We can't violate that and use our deposition from the prior
17 litigation before Judge Gonzalez-Rogers.

18 **THE COURT:** I understand, but you took that
19 deposition, didn't you?

20 **MR. BORNSTEIN:** I'm sorry, Your Honor?

21 **THE COURT:** You took that deposition, didn't you?

22 **MR. BORNSTEIN:** Well, I personally did not take the
23 deposition of Mr. Oliver. Someone on my team took that
24 deposition. Ms. Moskowitz took that.

25 **THE COURT:** Ms. Moskowitz. She's on the trial team

1 here.

2 **MR. BORNSTEIN:** She is on the trial team, but that is
3 information that we had and the deposition we had in the case
4 that's subject to a protective order. We can't reuse that.

5 **THE COURT:** No, I understand, but it's not like
6 they're writing on a blank slate.

7 **MR. BORNSTEIN:** Well, Your Honor, we are writing on a
8 blank slate in this case where there has been no Apple witness
9 who has been deposed at all. If this was such a critical issue
10 for Google to present an Apple witness to the Court, there
11 would have been notice at some point in the past that an Apple
12 witness, a specific Apple witness was going to be coming.
13 There would have been a deposition. This is, in fact, a new
14 introduction into the litigation, Your Honor.

15 **THE COURT:** All right. Google?

16 **MR. KRAVIS:** Good morning, Your Honor.

17 To start with my colleague from Epic's argument,
18 Google properly disclosed this witness. We listed Apple as a
19 corporate entity with relevant information in our initial
20 disclosures, as Epic did with respect --

21 **THE COURT:** Why didn't you do this earlier? Okay. I
22 mean, I understand that your thing has always been an open book
23 on Apple and you didn't do anything. Why didn't you do it
24 earlier?

25 **MR. KRAVIS:** Well, Your Honor, we started in early

1 June communications with Apple about identifying a witness who
2 would appear voluntarily at trial. Those discussions continued
3 up until September 11th. On September 11th when Apple finally
4 told Google the answer is no, we're not going to give you the
5 name of a voluntary witness, we promptly disclosed Mr. Oliver
6 to the plaintiffs, and we issued a subpoena for him within --

7 **THE COURT:** What was Apple telling you?

8 **MR. KRAVIS:** Those conversations began between
9 Google's outside counsel and Apple's outside counsel. At
10 Apple's counsel suggestion, those conversations moved to the
11 in-house counsel level, and then there was subsequent -- this
12 is all detailed in the declarations we filed. There was
13 subsequent communications between in-house counsel --

14 **THE COURT:** You're saying Apple led you along and then
15 pulled the rug out from under you?

16 **MR. KRAVIS:** Well, I just want to be clear about this.
17 Apple has always expressed a reluctance to identify a witness
18 who would testify voluntarily. However, this was the subject
19 of ongoing conversations in which --

20 **THE COURT:** I understand, but why didn't you drop the
21 hammer in July then? I mean, why did you give these guys such
22 a long time to equivocate?

23 **MR. KRAVIS:** Well, the argument of it was that the
24 deadline for making this decision was the final exchange of the
25 witness list, and while we were prepared, as we did, to pick a

1 witness on our own and subpoena them, our preference obviously
2 was to work with Apple to identify a witness voluntarily, and
3 it was only when we got a final answer on September 11th that
4 Apple was not going to do that, that we took the next step of
5 identifying the witness ourselves, disclosing them to
6 plaintiffs, and then issuing a subpoena --

7 **THE COURT:** Let me ask you this, how long -- I'm not
8 going to tie your hands, but just give me a rough sense of how
9 much time you intend to spend with Mr. Oliver at trial?

10 **MR. KRAVIS:** I think the Court's estimate of 45
11 minutes is the right ballpark.

12 **THE COURT:** Okay.

13 **MR. SRINIVASAN:** Your Honor, if I could just be heard
14 just a little bit on that. We never equivocate. We said in
15 June we will not produce the witness. They came back and said,
16 well, what about this person, what about that. No, we will not
17 produce a witness.

18 **THE COURT:** Your colleague says differently. He says
19 that you strung him along and then sucker punched him right at
20 the end.

21 **MR. SRINIVASAN:** I understand, Your Honor. I was the
22 one that -- I was personally the person on the phone talking,
23 not to the gentleman here, but his colleagues --

24 **THE COURT:** So you're saying from day one you're
25 saying this is not happening voluntarily?

1 **MR. SRINIVASAN:** From day one I said that we will not
2 do this voluntarily. At some point I did suggest, look, you're
3 not getting anywhere with me. If your client wants to talk to
4 my client and convince him otherwise, feel free. But the
5 message was always clear that there would be no -- we would not
6 voluntarily submit a witness for this trial, and that's always
7 been our position, number 1.

8 And what's concerning to me is their delay is now
9 impinging on my client, Mr. Oliver -- I understand, Your Honor,
10 you feel like he should be here at trial, but at a minimum he
11 should --

12 **THE COURT:** I'll deal with that.

13 So is that right? I mean, he's telling me differently
14 that he was crystal clear from day one that it wasn't going to
15 happen.

16 **MR. KRAVIS:** It was -- Your Honor, it was Apple's
17 outside counsel's suggestion that in-house counsel for the two
18 companies take up this conversation --

19 **THE COURT:** That's not my question. My question is
20 did he tell you from day one this is not going to happen
21 voluntarily?

22 **MR. KRAVIS:** What was communicated to us from Apple's
23 outside counsel was that Apple was not -- did not want to
24 produce a witness voluntarily. However --

25 **THE COURT:** All right. So you knew that in June, so I

1 mean, it changes my understanding a little bit.

2 Now, if that's true, you will have only 45 minutes at
3 trial. I will not let him testify longer than that, okay? You
4 can have him in the door, but you're capped at 45 minutes.

5 **MR. KRAVIS:** We'll do it.

6 **THE COURT:** That's it. That will be the compromise.

7 Because it is late, I don't find that there's particularly good
8 clause for either excluding him or for letting Google go longer
9 than that because they dropped the ball. So 4-hour deposition
10 should be long enough for 45 minutes of testimony.

11 **MR. DIXON:** Your Honor, if I might address that. This
12 is a blank slate for Match plaintiffs. We have not had a
13 chance to depose Mr. Oliver before. This is really the first
14 time that we're hearing about, of course, the relevance in a
15 very high-level depo. We would ask for a full day. We don't
16 have access to the --

17 **THE COURT:** I'm not going to do a full day. You
18 had -- you all could have asked for the Apple witness, too.
19 He's on the list. There's no dispute that Google put Apple on
20 the list.

21 **MR. DIXON:** Just now, Your Honor.

22 **THE COURT:** No, no, initial disclosures, and that was
23 what, three years ago, two years ago, some ridiculous amount of
24 time ago.

25 So you can have 4 hours, and you can work it out. He

1 is a third party. There are some limits to what I'm going to
2 make him do.

3 Okay. Now, when are you going to get this done?

4 **MR. SRINIVASAN:** We have to -- that's part of the
5 problem, is we don't have much time. We have to talk with
6 Mr. Oliver. We'll work with counsel to make it happen, Your
7 Honor.

8 **THE COURT:** Okay. All right. That takes care of
9 that.

10 Now, what was the other one? There was --

11 **MR. BORNSTEIN:** Mr. Miner Your Honor.

12 **THE COURT:** Mr. Miner, yes. Rich Miner, cofounder of
13 Android. Okay.

14 **MR. BORNSTEIN:** Correct, Your Honor. This one is very
15 straightforward from our perspective.

16 During the course of the litigation, the parties have
17 an agreement on a cap of fact depositions of witnesses. We
18 chose not to take Mr. Miner's deposition at that time.
19 Ms. Giulianelli, who has now left us, she sent a note saying we
20 choose not to depose Mr. Miner at this time. The parties agreed
21 in the protocol that in the event there was someone identified
22 for trial, there would be an opportunity to take that person's
23 deposition. That is what we would now like to do.

24 **THE COURT:** Just like Mr. Oliver.

25 **MR. BORNSTEIN:** Well, Mr. Oliver was disclosed late,

1 Your Honor. I don't want to retread ground, but I just heard
2 this information. Now we know he should have been disclosed
3 earlier. They were trying to get somebody. They never told us
4 all that happened. We were not informed it was happening
5 behind the scenes, and we were the ones who got sucker punched,
6 not Google, by Apple.

7 **THE COURT:** And so what would you like to do?

8 **MR. BORNSTEIN:** Well, what I'd like to do for Mr.
9 Miner is of course the deposition. We would like to take the
10 man's deposition like we're entitled to do.

11 The only argument that's been presented on the other
12 side is that a deposition took place of Google under 30(b) (6),
13 not of Mr. Miner.

14 **THE COURT:** No, I understand. We're not going to
15 tapdance on B1 versus B6.

16 Let me ask you, about how much time do you need with
17 him?

18 **MR. BORNSTEIN:** We need a day with Mr. Miner.

19 **THE COURT:** Another day?

20 **MR. BORNSTEIN:** Mr. Miner has been set for 90 minutes
21 of trial testimony by Google. That's their estimate of how
22 long he'll be on the stand. And as you said, he is the founder
23 of Android. They intend to use him, we now know --

24 **THE COURT:** The founder of Android and App Store or
25 Play Store is different. So, I mean, what are you going to ask

1 him? I mean, we don't need to go through the whole history of
2 Android in this trial.

3 **MR. BORNSTEIN:** Well, Your Honor, we don't know what
4 he's going to testify about. He is, again, he is a blank
5 slate. This is a brand new person as a trial witness. If we
6 take his --

7 **THE COURT:** You're going to need 7 hours at this point
8 in the case?

9 **MR. BORNSTEIN:** I do believe between the two parties
10 we need to have adequate time. Had we been taking his
11 deposition during the deposition period, of course we would
12 have an adequate time to do that.

13 **THE COURT:** He gave a 30(b)(6) depo, didn't he?

14 **MR. BORNSTEIN:** No, google gave a 30(b)(6) depo which
15 was limited to two hours on one topic, and that's it, and that
16 was Google, that was not Mr. Miner, and they've told us that
17 his trial testimony will go beyond the scope of that designated
18 topic on which Google was deposed.

19 **THE COURT:** Okay.

20 **MR. KRAVIS:** Your Honor, I hear the Court's point
21 about tapdancing on Rule 30 depositions. The Court ordered
22 four hours for that one. I think that's enough time for Mr.
23 Miner.

24 **MR. BORNSTEIN:** Your Honor, that is -- I hate saying
25 this -- apples and oranges, but we are talking --

THE COURT: You have been waiting all weekend.

(Laughter)

MR. BORNSTEIN: We are talking here about a --

THE COURT: All right. Seven hours, that's it. Seven
but you can beat it. I have confidence that you can

MR. BORNSTEIN: We will do our very best to be efficient with everybody's time, including our own.

THE COURT: You're getting short on time, so when are you going to do all these things?

MR. BORNSTEIN: We would like to take Mr. Miner's as soon as we can work out a schedule.

THE COURT: Okay. I think that's it for the motions.

MR. POMERANTZ: Yes, Your Honor.

MR. BORNSTEIN: Correct, Your Honor.

MR. POMERANTZ: If I could just raise one issue. I
briefly discussed this yesterday with both Mr. Dixon and
Mr. Bornstein.

That is that we had previously alerted Your Honor to the trial going on in D.C. in front of Judge Meadow, and we were hopeful it was going to end up taking a little bit shorter than had been projected. The opposite has occurred, and it is now scheduled to go at least until Thanksgiving. That overlap has an overlap both of some -- a few witnesses, as well as

1 in-house counsel who are responsible for both cases, and it's
2 hard for them to obviously be in two places at the same time.

3 So we do request, at least if Your Honor would give
4 consideration, to moving this trial from November 6th to the
5 first quarter of 2024.

6 **THE COURT:** I'm not going do that. I mean, we can
7 work this out. People can fly one day in D.C. and one day in
8 San Francisco. This has been on the deck now for too long.
9 We've known about this trial for too long.

10 As far as I can tell, there's zero overlap
11 substantively, one is search engine and one is Play Store. I
12 have a high degree of confidence that the business units within
13 Google reflect that. There may be some overlap at the senior
14 executive level, but in my experience senior executives usually
15 aren't the key witnesses in these cases anyway.

16 And I'm sorry, but in-house counsel is going to have a
17 couple of, you know, rough weeks flying business class from San
18 Francisco to D.C., and so on, but that's the way it's going to
19 be, okay?

20 **MR. POMERANTZ:** And just so that it's clear, I don't
21 think that's what Google pays for, but okay.

22 **THE COURT:** I would be surprised if they don't, but
23 I'll take your word for it.

24 **MR. POMERANTZ:** They don't for me, Your Honor, that's
25 all I can tell you.

1 **THE COURT:** You're flying from LA.

2 **MR. POMERANTZ:** Okay. Unfortunately I drive from LA,

3 and they all kid me.

4 Second issue, Your Honor, so Your Honor had ordered
5 these three parties now that remain to meet for settlement
6 purposes, senior executives --

7 **THE COURT:** Yes, what happened?

8 **MR. POMERANTZ:** And it did occur. It did occur.

9 **THE COURT:** Can you remind me, who are you using?

10 **MR. POMERANTZ:** No, this was a direct meeting.

11 **THE COURT:** Oh, okay. All right.

12 **MR. POMERANTZ:** Principals of all the parties.

13 **THE COURT:** Oh, that's right. Yes, you're right.

14 Yes. How did that go? I didn't remember that.

15 **MR. POMERANTZ:** And so I don't, you know, want to get
16 into anything substantive.

17 **THE COURT:** No. no.

18 **MR. POMERANTZ:** After that meeting, which happened a
19 few weeks ago now, discussions with Match continued. We have
20 not reached a settlement.

21 **THE COURT:** With Match?

22 **MR. POMERANTZ:** With Match. Discussions continued.
23 We have not -- there is no settlement reached. If there ever
24 is a settlement reached, we will immediately notify the Court.

25 **THE COURT:** All right. But you're still talking with

1 Match?

2 **MR. POMERANTZ:** I, I guess because Mr. Dixon and I
3 agreed on what we would disclose and we wouldn't disclose, I
4 would just say if we reached a settlement, we would notify the
5 Court.

6 **THE COURT:** What about Epic?

7 **MR. POMERANTZ:** Well, with Epic there was a -- they
8 were there, but that hasn't happened.

9 And the reason why I'm bringing this up is not so
10 much -- well, I wanted to report to the Court we followed -- all
11 of us complied with Your Honor's order.

12 **THE COURT:** Let me just jump in. Settlement is
13 totally different, and I'm not involved in it, and I don't
14 intend to be. I just, I don't understand why this can't -- you
15 know, Google cut its commission down to 15 percent, right? I
16 mean, that's the rule now for everybody, isn't it?

17 **MR. POMERANTZ:** No, it varies. There's a lot of
18 different plans out there, but very few, very view developers
19 at this point pay 30 percent, but there is still a
20 30 percent --

21 **THE COURT:** There is some movement on the commission
22 side.

23 **MR. POMERANTZ:** Yes.

24 **THE COURT:** And things have been evolving, and it's
25 just, you know, I don't know, maybe a little money from a prior

1 year. It's hard for me to see how this is not -- you're both
2 companies, this is business-to-business litigation. It's
3 just -- I'm going to ask rhetorically, I just don't understand
4 why you can't work this out.

5 **MR. BORNSTEIN:** Well, Your Honor, as we've said very
6 publicly, so I don't mind saying again, and I'm not violating
7 any confidences with our agreement, for Epic this is not about
8 money. Epic is looking to achieve openness on the Android
9 platform for all developers as --

10 **THE COURT:** What does that mean, though?

11 **MR. BORNSTEIN:** What it means is that if you're a
12 developer who wants to get your apps to users, my android, that
13 you don't have to be intermediated by going through a Google
14 store and going through Google's payment system, and you can
15 have a direct relationship with your own users on your own
16 store or on a third-party store that might provide better
17 service at lower prices.

18 **THE COURT:** Your own store?

19 **MR. BORNSTEIN:** Yes.

20 **THE COURT:** Each -- all these millions of apps would
21 have their own access point?

22 **MR. BORNSTEIN:** If they so choose. Obviously there
23 will be people who choose not to do that.

24 **THE COURT:** How would that even work? I mean, how
25 would you even -- I mean right now the whole point, the reason

1 we have stores is that you want 70 varieties of soup in one
2 place so you don't have to go to 70 different stores. So
3 why -- are we going to go back now to sort of 18th century
4 models where you buy apples in one store, you buy hay in
5 another store, you buy coffee in a third --

6 **MR. BORNSTEIN:** Well, no, Your Honor. What we'll have
7 is something much more modern than what we have right now on
8 Android. We'll have a situation where we'll have competition
9 among stores. It can't be that it's better under the Sherman
10 Act to have a world in which there's just one store and
11 everybody has to go there, and that store --

12 **THE COURT:** You're saying Epic wants an Epic store --
13 there's no competition. Epic is going to host Epic?

14 **MR. BORNSTEIN:** Epic also has a store right now on PC
15 and Mac where it hosts third parties, and it distributes third
16 parties in competition.

17 **THE COURT:** So you want competing stores?

18 **MR. BORNSTEIN:** Absolutely, Your Honor, competing
19 stores. And for those developers who choose to use their own
20 outlet like sometimes --

21 **THE COURT:** Okay. That's clearly something you're not
22 going to be able to negotiate.

23 **MR. BORNSTEIN:** That's correct, Your Honor.

24 **MR. POMERANTZ:** And, Your Honor, and these are the
25 kinds of issues that we were discussing generally.

1 **THE COURT:** I'm just asking.

2 **MR. POMERANTZ:** No, no, but just to be clear, the
3 leading Android manufacturer is Samsung. And every single
4 Samsung device comes with two app stores preloaded, Galaxy
5 Store, Samsung Galaxy Store, and then the Google Play Store,
6 and they're right next to each other on the home screen of
7 every Samsung device. And so the idea -- which is different
8 than iPhone. For those of us (shhh) who have iPhones, there's
9 only one App Store. There always has been only one App Store.
10 That's not true in Android. So there's a difference that
11 already exists, a fundamental difference, an important
12 difference for this case.

13 The reason why I brought this up is in part the issue
14 that Mr. Bornstein just raised, which is that Epic is not
15 seeking damages. And what that means is if by chance we settle
16 with Match, if by chance we do, then the interest claims raised
17 by Epic, and the interest defense to our counterclaim are
18 triable to the Court.

19 And Your Honor is now -- you know, we're moving
20 forward towards a November 6th trial date, and I understand
21 we're sticking with that. I just want you to be aware -- again,
22 none of this matters if we don't settle with Epic, I'm sorry,
23 with Match, but if we do, it's an issue we're going to have
24 to --

25 **THE COURT:** Well, that's the issue. There will be --

1 if it's equitable, you don't want a jury, that's the issue?

2 **MR. POMERANTZ:** They haven't asked for a jury and we
3 haven't asked for a jury. In fact, there is no jury.

4 **THE COURT:** That's the only issue, right?

5 **MR. POMERANTZ:** There is no jury.

6 But our counterclaim, we have a breach of contract
7 counterclaim that is triable to the jury, and so we just need to
8 work through that. We can discuss it next week at the pretrial
9 if necessary, if by chance there's a settlement with Match
10 between now and then.

11 But I just wanted -- I wanted Your Honor to be aware
12 of this.

13 **THE COURT:** I understand. Yeah, it's going to be a
14 jury trial unless and until a settlement with someone is
15 reached, and then we can talk about the potential
16 ramifications. But I have to say, so I have to send out the --
17 I'm sending out the screening questionnaire tomorrow, probably.

18 Oh, I forgot to tell you, this is a key point. We
19 have to do jury selection on November 2nd, not start on the 2nd.
20 We're going to do the in-court jury selection on November 2nd.
21 We have a number of larger cases coming up for the week of the
22 6th, and we're all kind of picking days in advance, so we'll
23 just select on the 2nd.

24 But the written questionnaire is going to go out -- we
25 have decided now as a court we're not going to do anymore Covid

1 screening, so we're dropping all the Covid questions, and I'm
2 not going to -- this is going to be like it's 2019 all over
3 again, okay?

4 So I do have one thing to talk about with you. I'm
5 open to your suggestions. Right up to this case we have been
6 doing the Covid screening, and I would typically have had a
7 Zoom session where we get, you know, all the responses back,
8 and we would all look at mainly the Covid questions but the
9 rest of the responses as well, just to decide who we might not
10 call in. Because my practice was not to have people in who
11 declined to be vaccinated or did not state because of the
12 infection -- with the consent of the parties, you know, the
13 parties would always consent, but now I'm not doing that.

14 I'm still willing to have kind of a prescreener, not
15 for peremptories and not for cause, just for like, obviously,
16 things like I'm having surgery -- this is very common: I'm
17 having surgery on November 9th. Okay. It actually can be good
18 just to kind of go through that and just -- we all mutually
19 agree, everybody agrees, if anybody doesn't agree, it's fine,
20 the person will come in, but we all agree this person will not
21 come in. So medical procedures.

22 Another common one is single parents who have no
23 possibility of any kind of childcare, and things like that,
24 okay?

25 So you want to do that? Should we do that, do a

1 little prescreener?

2 **MR. POMERANTZ:** I think that would be good.

3 **THE COURT:** Are you okay with that?

4 **MR. BORNSTEIN:** Yes, Your Honor.

5 **THE COURT:** And because it's Google and Epic, and, you
6 know, names that people recognize, I'm inviting a super large
7 pool of people, okay?

8 Now, I will also tell you there has been an uptick in
9 noncompliance for all of our trials in the last year. We can't
10 figure out why. It's a little bit of an outlier. So I'm taking
11 into account, and we'll be sending this to a larger number of
12 people, budgeting a little bit of that in.

13 Now, what will happen is you'll get this back, and the
14 jury office will send you the actual responses, okay? And then
15 we will get together maybe on November 1st by Zoom. Well,
16 actually, you will be here. Will you be here on November 1st
17 to do jury selection?

18 **MR. BORNSTEIN:** I will, Your Honor.

19 **THE COURT:** Well, let's just do it in person.

20 **MR. POMERANTZ:** Your Honor, I could just ask for it to
21 be in the afternoon?

22 **THE COURT:** That's fine, yeah. Well --

23 **MR. POMERANTZ:** Your Honor, it's just that there --

24 **THE COURT:** What day of the week is that?

25 **MR. POMERANTZ:** It's the day after Halloween, whatever

1 day that is.

2 **THE CLERK:** It's Wednesday.

3 **MR. POMERANTZ:** And for various reasons, there will be
4 some people arriving here in the morning of November 1st, and
5 so if we could do it in the afternoon.

6 **THE COURT:** Is that a --

7 **THE CLERK:** It's a Wednesday.

8 **THE COURT:** It's a Tuesday?

9 **THE CLERK:** Wednesday.

10 **THE COURT:** Wednesday. Oh, okay. Well, like
11 2:00 o'clock, what about that?

12 **MR. POMERANTZ:** That's fine.

13 **THE COURT:** All right. Let's do 2:00 o'clock on
14 Wednesday. You just come in and we'll just talk; is that all
15 right? And just whatever people we mutually agree don't have
16 to come in, not for cause, not for peremptories, just hardship,
17 basically, okay, just going to be like a hardship screening.

18 And if you want someone -- anybody who says no, I'll
19 have them in, all right? It's not a problem. So it's your one
20 time where you can insist.

21 Okay. Then -- well, actually, maybe Tuesday. You
22 want to do Monday? Tuesday?

23 All right. I'm sorry, I just realized that's not
24 enough time for the jury office to contact --

25 **MR. POMERANTZ:** Well, maybe we'll have this meeting

1 on --

2 **THE COURT:** So we'll do this on November 1st. I mean,
3 sorry. Is Tuesday Halloween?

4 **MR. POMERANTZ:** Yeah, we can -- we'll make it work,
5 Your Honor.

6 **THE COURT:** Well, are you going to be here
7 October 31st or would you rather have it be by Zoom?

8 **MR. POMERANTZ:** I prefer Zoom, Your Honor.

9 **MR. BORNSTEIN:** I will be here but Zoom is fine, Your
10 Honor. Whatever works.

11 **THE COURT:** Let's do it by Zoom. I'm sorry, I keep
12 forgetting Match. Anyway...

13 **MR. DIXON:** We plan on being at trial, Your Honor, so
14 yes.

15 **THE COURT:** Good. So we'll do Zoom.

16 What day is that, Lisa, the 31st?

17 **THE CLERK:** The 31st?

18 **THE COURT:** Yes.

19 **THE CLERK:** October 31st, Tuesday.

20 **THE COURT:** Tuesday, let's do it 11:00 a.m. and I'll
21 send a little Zoom thing, okay?

22 **MR. POMERANTZ:** And, Your Honor, what time will the
23 jury selection be on November 2nd?

24 **THE COURT:** 9:00 a.m. November 2nd. 2. 9:00 a.m.
25 We'll pick a jury -- my courtroom over the last 10 years, it

1 has never taken more than 90 minutes, okay?

2 And if it turns out there's no need for a jury, we
3 just don't invite them in on November 6th, all right.

4 I really would encourage you, I'm not going to dismiss
5 the idea of even having an advisory jury. Antitrust cases must
6 and should have juries, all right?

7 You of all people...

8 **MR. BORNSTEIN:** We very much would like to have a
9 jury, Your Honor, and I believe that it's too late for Google
10 to be saying we shouldn't. We don't need to get into the
11 argument --

12 **THE COURT:** We've already agreed on all that, I'm very
13 reluctant, so I will leave a tiny door open. But as far as I'm
14 concerned, it's a jury trial on the 6th.

15 **MR. BORNSTEIN:** That is our view as well, Your Honor.
16 Thank you.

17 **THE COURT:** Anything else?

18 Now, we have a big pretrial conference coming up.

19 **MR. BORNSTEIN:** Two other quick things, if I could
20 raise, Your Honor.

21 **THE COURT:** Yes, of course.

22 **MR. BORNSTEIN:** One is just a minor administrative
23 point, which is the parties have been discussing, and would
24 make a joint request to Your Honor, an issue relating to public
25 access, excuse me, access to the trial.

1 We currently have something in front of Your Honor
2 which maybe we'll deal with at the pretrial about public access
3 through an audio feed of some kind which we could take up at the
4 pretrial conference.

5 **THE COURT:** Well, you want to do it?

6 **MR. BORNSTEIN:** We would very much like to have a --

7 **THE COURT:** You both agree?

8 **MR. BORNSTEIN:** -- public audio feed. On this point
9 Google disagrees.

10 What we've agreed on is if the Court can accommodate
11 it to have an audio feed for our respective trial teams, since
12 not everyone will be in the courtroom on a given day --

13 **THE COURT:** I can actually do realtime if you prefer
14 to do that.

15 **MR. BORNSTEIN:** We'd very much like realtime for our
16 trial teams, and we support realtime for the public as well.

17 **THE COURT:** Well, I typically -- in larger cases like
18 this, I'm perfectly fine with realtime streams to your
19 out-of-courtroom people.

20 It's very interesting, there is tremendous foment
21 right now on cameras in the courtroom. So the official policy
22 is I cannot do it -- this is a terrible policy that I've railed
23 against, but no one is listening. I cannot do it if one party
24 says no, so I can't broadcast.

25 But the audio thing is -- we just got a new guidance

1 from the Judicial Council, so let me take a look at that. I
2 don't know, I believe it actually requires consent of both sides
3 as well.

4 So you do not?

5 **MR. POMERANTZ:** That's my understanding.

6 **THE COURT:** Why not let the world see? They're going
7 to see it anyway. I'm not sealing the courtroom. This is
8 not -- I know other judges -- we're not going overboard on
9 sealing.

10 **MR. POMERANTZ:** We understand, Your Honor. We
11 understand, but, no, we don't consent.

12 There is one other issue, Your Honor.

13 **THE COURT:** You've got Galaxy, you've got all these
14 points you want to make and you don't want the world to hear
15 it? No?

16 **MR. POMERANTZ:** No. There is one other point I think
17 we probably all want to raise, which is the amount of time set
18 aside for trial.

19 **THE COURT:** I've already said that.

20 **MR. POMERANTZ:** Just so we're clear, we had -- when
21 all of the parties were together, we had proposed 50 hours per
22 side, a hundred hours, and Your Honor had accepted that. Then
23 when we announced that there would be a settlement with the
24 states and the consumers, you asked us to cut it back by a bit.
25 And while we haven't reached agreement on that, we would be

1 amenable to cutting it back from 50 to somewhat less, but even
2 that would take it past November, maybe past Thanksgiving.

3 **THE COURT:** Well, I think we're going to have to go
4 full days, okay? We're just going to have to get it done, so
5 we'll just do 9 to 5. I mean, we have to get it done in
6 November.

7 **MR. POMERANTZ:** So, because we're going to have to
8 reach agreement on time, because we had agreed that we're going
9 to split it 50/50 whatever the time is.

10 **THE COURT:** Yes, and I'm glad -- I mean, I'm not going
11 to give everybody, each side 50 hours or more. This can't be
12 that complicated.

13 **MR. BORNSTEIN:** Well, Your Honor, if I could give you
14 a little perspective. In the trial that we had before Judge
15 Gonzalez-Rogers against Apple, she gave us 90 hours of trial
16 time, plus she accepted --

17 **THE COURT:** Per side?

18 **MR. BORNSTEIN:** No, no, total, 45 per side. Plus she
19 accepted 4 hours per side of deposition testimony that Judge
20 Gonzalez-Rogers reviewed in chambers, so that was in addition
21 to the 45, so effectively 49 hours of testimony per side in a
22 case with no damages claim, only one party on each side.

23 **THE COURT:** How much of it did you use?

24 **MR. BORNSTEIN:** I'm sorry?

25 **THE COURT:** How much of it did you use?

1 **MR. BORNSTEIN:** We used it all, Your Honor, we used it
2 all.

3 I do believe we can be efficient here. We have to, we
4 have another plaintiff. We have damages claims. There are
5 counterclaims that will be tried here that were not tried in the
6 prior matter, because there were stipulations that obviated some
7 of the counterclaim issues. This is a more complicated case as
8 a result, and so we would respectfully request that we use that
9 as a benchmark. We think that worked very well.

10 **THE COURT:** Well, I am not -- I do not review
11 deposition testimony on my own. It has to be admitted at trial
12 or I'm not going to consider it.

13 **MR. BORNSTEIN:** Absolutely, Your Honor, we understood
14 that, especially if we're having a jury, as we think we should,
15 that would not be an option. I raise that just as a --

16 **THE COURT:** No, in case we don't have a jury.

17 **MR. BORNSTEIN:** I understand. I raise that just as a
18 reference point to the amount of time --

19 **THE COURT:** I don't think I'm going to give you that
20 much time. I will think about it, but that strikes me as more
21 than this case needs.

22 So we'll take it up next week, okay?

23 **MR. BORNSTEIN:** Yes, Your Honor.

24 **THE COURT:** Okay. Anything else in advance of the
25 pretrial conference?

1 **MR. DIXON:** I had one other thing. Just inquiring
2 about the status of the summary judgment motions. I believe
3 there are two still pending with the -- that involve the
4 parties that remain in this case going to trial on
5 November 6th. We had Match's motion for summary judgment and
6 Google's motion for summary judgment.

7 **THE COURT:** Well, yes. I'll let you know. It will be
8 done by next week.

9 **MR. DIXON:** Thank you, Your Honor.

10 **THE COURT:** Anything else?

11 **MR. BORNSTEIN:** No, Your Honor.

12 We'll coordinate with Ms. Clark and the courtroom
13 staff on the audio question, and we had some technology issues
14 that she was kind enough to accommodate us on.

15 **THE COURT:** Oh, yes, so you should pick a date for
16 that.

17 Also, I saw a reference at one point to a joint
18 proposal of bringing in snacks for the jury?

19 **MR. BORNSTEIN:** Correct, Your Honor. We would like to
20 do that, and we will split the costs, obviously, among the
21 parties.

22 **THE COURT:** What do you have in mind?

23 **MR. BORNSTEIN:** Well, Your Honor, we could either
24 solicit the jury's preferences or we can make some educated
25 guesses on things that will not soil the courtroom.

THE COURT: Yes, or be suggested as to the verdict.

(Laughter)

MR. BORNSTEIN: This will be a subject on which we will --

THE COURT: No candies with hidden messages on them.

(Laughter)

THE COURT: Okay. Anything else, Defendant?

MR. POMERANTZ: No.

9 **THE COURT:** Good. All right. We'll see you next
10 week. Thank you.

ALL COUNSEL: Thank you, Your Honor.

(Whereupon, proceedings adjourned at 12:13 p.m.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE, 16TH FLOOR, SAN FRANCISCO, CA 94102, DO HEREBY CERTIFY:

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October 13, 2023



Rhonda L. Aquitina, RMR, CRR, CSR 9956